

**BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2008-83

**MELANIE TOCZEK  
A.K.A. MELANIE VOLENEC**  
501 Locust Avenue  
Manteca, CA 95337

Registered Nurse License No. 569252

Respondent.

**DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 29, 2008.

It is so ORDERED July 29, 2008.

*LaTranene W Tate*

\_\_\_\_\_  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 FRANK H. PACOE  
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7 Attorneys for Complainant

8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

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11 **MELANIE TOCZEK**  
12 **A.K.A. MELANIE VOLENEC**  
501 Locust Avenue  
13 Manteca, CA 95337

**STIPULATED SURRENDER OF**  
**LICENSE AND ORDER**

14 Registered Nurse License No. 569252

15 Respondent.

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant), is the Executive Officer of  
21 the Board of Registered Nursing (Board), Department of Consumer Affairs. She brought this  
22 action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr.,  
23 Attorney General of the State of California, by Leslie E. Brast, Deputy Attorney General.

24 2. Melanie Toczec, also known as Melanie Volenec (Respondent), is  
25 representing herself in this proceeding and has chosen not to exercise her right to be represented  
26 by counsel.

27 3. On or about July 26, 2000, the Board issued Registered Nurse License No.  
28 569252 to Respondent. The license will expire on April 30, 2008, unless renewed.

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16. Respondent fully understands and agrees that if she ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2008-83 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

17. Should Respondent seek future reinstatement of her Registered Nurse license, Respondent shall pay the Board its costs of investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of Fifteen Thousand Nine Hundred Fifty-Four Dollars and No Cents (\$15,954.00) prior to issuance of a new or reinstated license. Respondent shall be permitted to pay these costs in a payment plan approved by the Board.

18. Should Respondent ever apply or reapply for a new license or certification or petition for reinstatement of a license by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 2008-83 shall be deemed to be true, correct and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

19. Respondent shall not apply for licensure or petition for reinstatement for two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

## ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 5.2.08

Melanie Toczek (Volenec)  
Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: May 8, 2008

EDMUND G. BROWN JR., Attorney General  
of the State of California

FRANK H. PACOE  
Supervising Deputy Attorney General



LESLIE E. BRAST  
Deputy Attorney General

Attorneys for Complainant

**Exhibit A**  
**Accusation No. 2008-83**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 LESLIE E. BRAST, State Bar No. 203296  
Deputy Attorney General  
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6 Facsimile: (415) 703-5480

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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-83

13 **MELANIE VOLENEC**  
2181 N. Tracy Blvd. # 213  
Tracy, California 95376

**A C C U S A T I O N**

14 Registered Nurse License No. 569252

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant), brings this Accusation  
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
20 Department of Consumer Affairs.

21 2. On or about July 26, 2000, the Board of Registered Nursing (Board) issued  
22 Registered Nurse License Number 569252 to Melanie Volenec (Respondent). The license was in  
23 full force and effect at all times relevant to the charges brought herein; it will expire on April 30,  
24 2008, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the  
27 following laws. All section references are to the Business and Professions Code (Code) unless  
28 otherwise indicated.



4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Code section 492 provides, in pertinent part, that successful completion of any diversion program under the Penal Code shall not prohibit any agency from taking disciplinary action against a licensee.

## STATUTORY PROVISIONS

6. Code section 2761 provides, in pertinent part:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

• • •

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

• • •

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof . . .”

7. Code section 2762 provides, in pertinent part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

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1 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a  
2 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish  
3 or administer to another, any controlled substance as defined in Division 10 (commencing with  
4 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device  
5 as defined in Section 4022.

6 (b) Use any controlled substance as defined in Division 10 (commencing with  
7 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as  
8 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or  
9 injurious to himself or herself, any other person, or the public or to the extent that such use  
10 impairs his or her ability to conduct with safety to the public the practice authorized by his or her  
11 license.

12 ...

13 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible  
14 entries in any hospital, patient, or other record pertaining to the substances described in  
15 subdivision (a) of this section.”

16 8. Health and Safety Code section 11173, subdivision (a), provides that “[no]  
17 person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure  
18 the administration of or prescription for controlled substances, (1) by fraud, deceit,  
19 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

20 9. Code section 4060 provides:

21 “No person shall possess any controlled substance, except that furnished to a  
22 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
23 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a  
24 certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section  
25 2836.1, [or] a physician assistant pursuant to Section 3502.1 . . .”

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10. Code section 2770.11 provides:

“(a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by a committee. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. . .

(b) If a committee determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the committee shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.”

11. Code section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable investigation and enforcement costs of the case.

#### REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1442, provides:

“As used in Section 2761 of the code, ‘gross negligence’ includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.”

13. California Code of Regulations, title 16, section 1444, provides, in pertinent part, that “[a] conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.”

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1                                    CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2                    14.      Code section 4021 states:

3                    “‘Controlled substance’ means any substance listed in Chapter 2 (commencing  
4 with Section 11053) of Division 10 of the Health and Safety Code.”

5                    15.      Code section 4022 provides:

6                    “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for  
7 self-use in humans or animals, and includes the following:

8                    (a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing  
9 without prescription,’ ‘Rx only’ or words of similar import.

10                   (b) Any device that bears the statement: ‘Caution: federal law restricts this  
11 device to sale by or on the order of a \_\_\_\_\_,’ ‘Rx only,’ or words of similar import . . .

12                   (c) Any other drug or device that by federal or state law can be lawfully dispensed  
13 only on prescription or furnished pursuant to Section 4006.”

14                   16.      “**Demerol**” is a compound containing Meperidine Hydrochloride, and is a  
15 Schedule II controlled substance as designated by Health and Safety Code section 11055,  
16 subdivision (c)(17), and a dangerous drug within the meaning of Code section 4022.

17                   17.      “**Fioricet with Codeine**” is a combination drug product (butalbital,  
18 acetaminophen, caffeine, and codeine phosphate) and a Schedule III controlled substance as  
19 designated by Health and Safety Code section 11056, subdivision (e)(2), and a dangerous drug  
20 within the meaning of Code section 4022.

21                   18.      “**Morphine Sulfate**” is a Schedule II controlled substance as designated  
22 by Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug within  
23 the meaning of Code section 4022.

24                   19.      “**Vicodin**” is a compound consisting of acetaminophen and hydrocodone  
25 bitartrate, also known as dihydrocodeinone, and is a Schedule III controlled substance as  
26 designated by Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug  
27 within the meaning of Code section 4022.

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1 FACTUAL BACKGROUND

2 20. On or about November 28, 2000, Respondent attempted to fill a forged  
3 prescription for Vicodin at a grocery store pharmacy. She admitted to police that she had forged  
4 the prescription for self-administration as well as another for Fioricet with Codeine dated  
5 November 17, 2000. On or about June 26, 2001, in San Joaquin County Superior Court Case  
6 No. TF030530A, Respondent was granted Deferred Entry of Judgement (DEJ)<sup>1/</sup> for having  
7 violated Health and Safety Code section 11377 [unlawful possession of a controlled substance].  
8 DEJ was terminated and the criminal charges dismissed on or about December 13, 2002, upon  
9 Respondent's successful completion of court-ordered diversion.

10 21. During or around May 2002, Respondent worked as a registered nurse at  
11 John Muir Medical Center (JMMC), located in Walnut Creek, California. On multiple occasions  
12 while working at JMMC, Respondent obtained excessive doses of controlled substances for  
13 patient administration by accessing the hospital's Pyxis.<sup>2/</sup> Respondent administered the  
14 physician-ordered dosage to the patient, and subsequently self-administered the waste at her  
15 home. The circumstances are detailed as follows:

16 John Muir Medical Center (May 2002)

17 1. Patient JA<sup>3/</sup>

18 A. On or about May 22, 2002, at approximately 2359 hours,  
19 Respondent obtained 10 milligrams (mg) of Morphine Sulfate for administration to Patient JA  
20 and charted 2mg administered. Respondent failed to document or otherwise properly account for  
21 the remaining 8mg.

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23  
24 1. DEJ provides for post-plea drug diversion as an alternative to criminal sentencing. Pursuant to Penal  
25 Code section 1000, entry of judgment is deferred unless and until the defendant fails to comply with the terms of  
diversion. The statute expressly provides that, unless sentencing occurs, there has been no conviction.

26 2. Pyxis is a brand name for an automated medication dispensing and supply system. A Personal  
27 Identification Number (PIN) code is used to access controlled substances from the system which automatically  
logs all transactions involving the removal of controlled substances, including the names of the person accessing  
the system and the patient for whom the substances were ordered, the date, time, and dosage being obtained.

28 3. Initials are used to protect the patients' privacy; their full names will be made available in discovery.

1 B. On or about May 23, 2002, at approximately 0044 hours,  
2 Respondent obtained 10mg of Morphine Sulfate. She charted 2mg administered to Patient JA.  
3 No waste was recorded at the time of removal. At approximately 0230 hours, Respondent  
4 charted another 2mg Morphine Sulfate administered to Patient JA. At approximately 0731 hours  
5 that morning, Respondent recorded 5mg waste. She failed to document or otherwise properly  
6 account for the remaining 1mg.

7 2. Patient FH

8 On or about May 8 and 9, 2002, Respondent obtained Morphine Sulfate  
9 for administration to Patient FH. Charting of her administrations does not coordinate with  
10 removal times and she failed to document or otherwise properly account for 20mg Morphine  
11 Sulfate as follows:

12 A. On or about May 8, 2002, at approximately 0322 hours,  
13 Respondent obtained 10mg of Morphine Sulfate. Physician's orders called for 2mg Morphine  
14 Sulfate for chest pain unrelieved by nitroglycerin. Respondent did not chart the administration of  
15 nitroglycerin. At approximately 0726 hours, Respondent obtained another 10mg of Morphine  
16 Sulfate. At approximately 0159 hours, Respondent charted chest pain and administration of 5mg  
17 Morphine Sulfate and administration of another 5mg Morphine Sulfate at approximately 0530,  
18 resulting in 10mg Morphine Sulfate unaccounted for.

19 B. On or about May 9, 2002, at approximately 0226 hours,  
20 Respondent obtained 10mg Morphine Sulfate for administration to Patient FH. Physician's  
21 orders called for 2mg Morphine Sulfate for chest pain unrelieved by nitroglycerin. Respondent  
22 did not chart the administration of nitroglycerin. She failed to document or otherwise properly  
23 account for any of the 10mg of Morphine Sulfate.

24 3. Patient DK

25 A. On or about May 23, 2002, at approximately 0022 hours,  
26 Respondent obtained 100mg of Demerol for administration to Patient DK. No waste was  
27 recorded at the time of removal. Respondent charted 75mg administered at 0030, but failed to  
28 document or otherwise properly account for the remaining 25mg.

1 B. On or about May 23, 2002, at approximately 0053 hours,  
2 Respondent obtained 4mg Morphine Sulfate for administration to Patient DK. At approximately  
3 0200 hours, more than an hour later, she charted the administration of 4mg Morphine Sulfate.

4 C. On or about May 23, 2002, at approximately 0348, Respondent  
5 obtained 100mg Demerol for administration to Patient DK. No waste was recorded at the time of  
6 removal. Respondent charted 75mg administered at 0445. Later, at approximately 0732, she  
7 recorded 50mg waste.

8 4. Patient MJ

9 A. On or about May 14, 2002, at approximately 1939 hours,  
10 Respondent obtained two 25mg vials of Demerol for administration to Patient MJ. At  
11 approximately 2045 hours, she charted administration to Patient MJ of 25mg, but failed to  
12 document or otherwise properly account for the remaining 25mg.

13 B. On or about May 14, 2002, at approximately 2035 hours,  
14 Respondent obtained two 25mg vials of Demerol for administration to Patient MJ. At  
15 approximately 2100 hours, she charted administration to Patient MJ of 25mg, but failed to  
16 document or otherwise properly account for the remaining 25mg.

17 C. On or about May 15, 2002, at approximately 0156 hours,  
18 Respondent obtained two 25mg vials of Demerol for administration to Patient MJ. At  
19 approximately 0200 hours, she charted administration to Patient MJ of 25mg, but failed to  
20 document or otherwise properly account for the remaining 25mg.

21 D. In all three instances, Respondent failed to record any pain  
22 assessment in Patient MJ's chart.

23 5. Patient LW

24 On or about May 8 and 9, 2002, Physician's orders called for 25 to 100mg  
25 Demerol administered to Patient LW every three hours as needed. Respondent's administrations  
26 exceeded physician's orders and her charting reflected minimal pain assessment as follows:

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1 A. On or about May 8, 2002, at approximately 2056 hours,  
2 Respondent obtained four 25mg vials of Demerol for administration to Patient LW. On or about  
3 May 9, 2002, at approximately 0118 hours, she charted the administration of 100mg.

4 B. On or about May 8, 2002, at approximately 2357 hours,  
5 Respondent obtained 100mg Demerol for administration to Patient LW. She did not chart a  
6 corresponding administration to the patient.

7 C. On or about May 9, 2002, at approximately 0351 hours,  
8 Respondent obtained 100mg Demerol for administration to Patient LW; she charted  
9 administration of 100mg Demerol at approximately 0356 hours.

10 D. On or about May 9, 2002, at approximately 0801 hours,  
11 Respondent obtained 100mg Demerol for administration to Patient LW; she charted  
12 administration of 100mg Demerol at approximately 0800 hours.

13 E. On or about May 9, 2002, at approximately 1044 hours,  
14 Respondent obtained 100mg Demerol for administration to Patient LW; she charted  
15 administration of 100mg Demerol at approximately 1100 hours.

16 22. During the investigation of Respondent's conduct at JMMC, Respondent  
17 admitted diverting medication for self-administration and voluntarily enrolled in the Board's  
18 Diversion Program on or about October 3, 2002. Respondent was terminated from the program  
19 as a "Public Safety Threat" on or about July 8, 2004, for failure to comply with the provisions of  
20 her rehabilitation plan.

21 23. On or about January 24, 2007, in San Joaquin County Superior Court  
22 Case No. TM109271A, Respondent was convicted of having violated Health and Safety Code  
23 section 11550, subdivision (a) [under the influence of a controlled substance], a misdemeanor.  
24 Her conviction followed two arrests, one of which was prompted by Respondent's 9-1-1 call  
25 reporting that she had overdosed on methamphetamine in an attempt at suicide and requesting  
26 medical assistance.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Fraudulent Procurement of Controlled Substances)

3 24. Respondent is subject to disciplinary action for unprofessional conduct  
4 under Code sections 2762, subdivision (a), and 2761, subdivision (d), in that while working as a  
5 Registered Nurse, she obtained controlled substances and/or dangerous drugs by fraud, deceit,  
6 misrepresentation, subterfuge, or by the concealment of material facts, in violation of Health and  
7 Safety Code section 11173, subdivision (a), as described in paragraphs 20 through 22, above.

8  
9 SECOND CAUSE FOR DISCIPLINE

10 (False, Grossly Incorrect, Grossly Inconsistent Record Entries)

11 25. Respondent is subject to disciplinary action for unprofessional conduct  
12 under Code sections 2762, subdivision (e), and 2761, subdivision (d), in that she made false,  
13 grossly incorrect, or grossly inconsistent entries in hospital, patient, or other records pertaining to  
14 controlled substances and/or dangerous drugs, as described in paragraph 21, above.

15  
16 THIRD CAUSE FOR DISCIPLINE

17 (Wrongful Possession of Controlled substances)

18 26. Respondent is subject to disciplinary action for unprofessional conduct  
19 under Code sections 2762, subdivision (a), and 2761, subdivision (d), in that she possessed  
20 without a prescription controlled substances and/or dangerous drugs in violation of Code section  
21 4060, as described in paragraphs 20 through 23, above.

22  
23 FOURTH CAUSE FOR DISCIPLINE

24 (Conviction of Crime)

25 27. Respondent is subject to disciplinary action under Code section 2761,  
26 subdivision (f), in that she was convicted of a crime substantially related to the qualifications,  
27 functions or duties of a registered nurse within the meaning of California Code of Regulations,  
28 title 16, section 1444. The circumstances are detailed in paragraph 23, above.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Wrongful Self-Administration of Controlled Substances)

3 28. Respondent is subject to disciplinary action for unprofessional conduct  
4 under Code sections 2762, subdivision (a), and 2761, subdivision (d), in that Respondent self-  
5 administered controlled substances, as described in paragraphs 20 through 23, above.  
6

7 SIXTH CAUSE FOR DISCIPLINE

8 (Dangerous or Injurious Use of Controlled Substances)

9 29. Respondent is subject to disciplinary action for unprofessional  
10 conduct under Code sections 2762, subdivision (b), and 2761, subdivision (d), in that she used  
11 controlled substances and/or dangerous drugs to such an extent or in such a manner as to be  
12 dangerous or injurious to herself, other persons, or the public, or to such an extent that such  
13 usage impaired Respondent's ability to safely practice nursing. The circumstances are detailed in  
14 paragraphs 20 through 23, above.  
15

16 SEVENTH CAUSE FOR DISCIPLINE

17 (Gross Negligence)

18 30. Respondent is subject to disciplinary action for unprofessional conduct  
19 under Code section 2761, subdivision (a)(1), in that she committed acts of gross negligence  
20 within the meaning of California Code of Regulations, title 16, section 1442, as described in  
21 paragraphs 20 through 23, above.  
22

23 EIGHTH CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct)

25 31. Respondent is subject to disciplinary action for unprofessional conduct  
26 under Code section 2761, subdivision (a), as described in paragraphs 20 through 23, above.  
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